

Request for Reconsideration:

By this amendment, Applicants now are amending claims 1 and 23 and canceling claim 26, without prejudice or disclaimer of subject-matter. Applicants introduce no new matter by these amendments, which are fully supported by the specification, as filed. See, e.g., Appl'n, **Figs. 17-19**. Accordingly, claims 1-12, 23-25, and 27-33 are pending in the above-captioned patent application. Applicants respectfully request that the Examiner enter these amendments and reconsider the above-captioned patent application in view of the foregoing amendments and the following remarks.

Remarks:

1. Rejections.

Claims 1-3, 5-8, and 12 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Patent Publication No. US 2005/0192604 A1 to Carson et al. (“Carson”), in view of Patent Publication No. US 2002/0161383 A1 to Akin et al. (“Akin”). Claims 4 and 9 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson in view of Akin, and further in view of Patent Publication No. WO 00/24339 to Berreklouw. Claim 10 stands rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson in view of Akin, and further in view of Patent No. U.S. 6,814,750 B2 to Kavteladze et al. (“Kavteladze”). Claim 11 stands rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Carson in view of Akin, and further in view of Patent No. U.S. 6,554,848 B2 to Boylan et al. (“Boylan”). Claims 23-27 and 29-33 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Akin. Claim 28 stands rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Akin in view of Carson. Applicants respectfully traverse.

2. Obviousness Rejections.

In order to establish a prima facie case of obviousness, the Office Action must fulfill three (3) basic criteria. MPEP 2142 and 2143. First, there must be some clear and explicit articulation of the reason(s) why the claimed invention would have been obvious, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, including a reason to modify the primary reference as proposed by the Office Action. Second, there must be a reasonable expectation of success. MPEP 2143.02. To satisfy this criterion, the Office Action must demonstrate that “one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art.”

MPEP 2143.02. Third, the cited references or the knowledge generally available to those of ordinary skill in the art must disclose or suggest all of the claim limitations. MPEP 2142. For the reasons set forth below, Applicants respectfully submit that the Office Action fails to establish a prima facie case of obviousness.

a. Independent Claim 1

As noted above, the Office Action rejects independent claim 1, as allegedly rendered obvious by Carson in view of Akin. Claim 1 describes a combination of elements, including “a channel extending from a first end to a second end along a second direction substantially perpendicular to the first direction, said first end having a substantially elliptical cross-section in the first direction connected to said saddle and said second end having a substantially circular cross-section in the first direction.” The Office Action acknowledges that Carson fails to disclose a “channel extending along a second direction substantially perpendicular to the longitudinal axis.” Office Action, Page 4, Lines 3-5. Nevertheless, the Office Action contends that it would have been obvious to modify Carson in view of a side-by-side anastomosis depicted in **Fig. 13** of Akin. Applicants respectfully traverse.

In particular, the Office Action contends that a “tube or conduit with a round cross-section will attain an oval or elliptical cross section when it is cut at an angle. Therefore, the tube [of Carson] is round at one end, and has an elliptical shaped opening where it attaches to the saddle.” Office Action, Page 3, Lines 17-19. Thus, if conduit 18 is modified, so that it extends perpendicular to the axis of saddle 14, the angle would be eliminated and the conduit would have a substantially circular cross-section at each end. This is confirmed by **Fig. 13** of Akin, which depicts channel 156 having a circular cross-section at each end.

Further, the Office Action contends incorrectly that “due to the curvature of the saddle where the tube attaches to it, the aperture in that end of the tube would never be circular.” Office Action, Page 3, Lines 20-21. Carson clearly depicts saddle 112 including a central opening 126 that has a circular cross-section in the first direction, as shown in **Fig. 10A**, despite the curvature of saddle 112, as shown in **Fig. 10B**. Accordingly, Carson and Akin both fail to disclose or suggest a channel having a one end with a substantially circular cross-section and another end with a substantially elliptical cross-section, as set forth in claim 1. Therefore, Applicants respectfully submit that independent claim 1 is distinguishable over Carson in view of Akin, at least for this reason.

Moreover, according to claim 1, as amended, “said tissue clamp [is] configured to elastically move from a clamped position substantially corresponding to a shape of said saddle to an unclamped position not corresponding to the shape of said saddle.” In contrast, securing component 16 of Carson is formed of a fixed shape corresponding to securing component 14. Carson, **Fig. 1A**. Securing component 16 is moved along sleeve 42 until grooves 38 of securing component 16 engage teeth 34 of securing component 14, and vessel wall W is captured and compressed between the securing components. Carson, Para. [0071]; **Fig. 3B**. Accordingly, Carson and Akin fail to disclose or suggest a tissue clamp configured to move to a second unclamped position that does not correspond to the shape of the saddle. Therefore, Applicants respectfully submit that amended claim 1 is distinguishable over Carson in view of Akin, at least for this additional reason. Thus, Applicants respectfully request that the Examiner withdraw the obviousness rejection of independent claim 1, as amended.

b. Independent Claim 23

As noted above, the Office Action rejects independent claim 23, as allegedly rendered obvious by Akin. The Office Action contends that the rims of channels 80, 84, correspond to the claimed first and second flange, as set forth in claim 23. Office Action, Page 7, Lines 13-15. The Office Action states that the definition of flange is “a projecting rim, collar, or ring on a shaft, pipe . . . to provide a place for the attachment of other objects.” Office Action, Page 10, Lines 7-9. The Office Action then states that the rims are “projections from the saddle portion” that “provide a place for the attachment of other objects.” Office Action, Page 10, Lines 9-11. The purported “flanges” of Akin, however, are merely the terminal ends of channel portions 80, 84, and no structure projects from these channels as required by the Office Action’s purported definition of flange. See Akin, **Fig. 10**. Moreover, Akin does not disclose that any structure is attached to these rims.

Nevertheless, claim 23, as amended, describes “a first flange projecting from the first channel and surrounding the first channel adjacent to an end of the first channel opposite the first saddle” and “a second flange projecting from the second channel and surrounding the second channel adjacent to an end of the second channel opposite the second saddle.” In addition, claim 23, as amended, incorporates the limitations of claim 26, and further describes that the flanges include mating surfaces that are configured to engage one another when the flanges are secured together by the clamping ring.

Akin fails to disclose or suggest flanges projecting from and surrounding the ends of channel portions 80, 84, as set forth in amended claim 23. Instead, Akin states that “a fluid-tight flow channel is created when second channel portion 84 is inserted, in the direction of arrow 86, within the lumen of first channel portion 80.” Akin, Para [0095] (emphasis added).

Accordingly, the rims do not have portions that engage one another, and collar 122 merely is positioned around the flow channel created by portions 80, 84, and collar 122 does not secure the ends of portions 80, 84 to one another. Furthermore, modifying channel portions 80, 84 with the claimed projecting flanges adjacent to the ends of each channel would prevent the press-fit arrangement described in Akin. See MPEP 2143.01(VI) (Proposed modification of reference cannot change its principle of operation). Therefore, amended claim 23 is distinguishable over Akin, at least for these reasons. Thus, Applicants respectfully request that the Examiner withdraw the obviousness rejection of independent claim 23, as amended.

c. Dependent Claims 2-12, 24-25, and 27-33

Claims 2-12 ultimately depend from independent claim 1, and claims 24-25 and 27-33 depend from independent claim 23. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” MPEP 2143.03 (citations omitted). Moreover, the Office Action does not contend that the limitations missing from claims 1 and 23 are disclosed or suggested by any of the other cited references. Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejections of dependent claims 2-12, 24-25, and 27-33, at least for these reasons.

Conclusion:

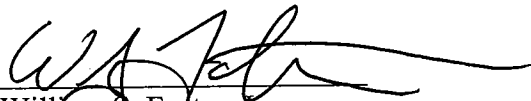
Applicants maintain that the above-captioned patent application, as amended, is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this application may be furthered by discussing the application, in person or by telephone, with Applicants' representative, we would welcome the opportunity to do so.

Applicants believe that no fees, in addition to the fee for a one-month extension of time to respond, are due as a result of the submission of this responsive amendment. Nevertheless, in the event of any variance between the fees determined by Applicants and the fees determined by the PTO, please charge or credit any such variance to the undersigned's **Deposit Account No. 02-0375.**

Respectfully submitted,
BAKER BOTTS, L.L.P.

Date: **January 26, 2009**

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